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STATE OF ILLINOIS

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October 4, 1976

Ms. Chris Moffett
Clerk of the Board
Pollution Control Board
309 West Washington Street, Suite 300
Chicago, Illinois 60606

RE: EPA v. D&N Trucking, et al.
PCB 76-104

Dear Ms. Moffett:

Enclosed is the Stipulation and Proposal for Settlement executed by all parties to the above captioned case. The Stipulation and Proposal for Settlement was executed by the representatives of D&N Trucking, Inc., David H. Thom and Dolores Thom, and Rose K. Phillips at public hearing held on September 29, 1976. Assistant Attorney General Helga Huber, appearing for the Illinois Environmental Protection Agency at the hearing, represented on the record that the Agency approved of the enclosed Stipulation and Proposal for Settlement, and that it would be sent to the Agency for signature.

If you have any questions, do not hesitate to contact me.

Very truly yours,

Delbert Haschemeyer
Coordinator for Enforcement Programs

cc: Helga Huber, Assistant Attorney General
ESS files
CPOB - Aurora
POS - Central Files

DM:RO:kmb:MS

EPA Region 5 Records Ctr.



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the nature of the work for identification

NOW COMES Complainant, the ENVIRONMENTAL PROTECTION AGENCY of the State of Illinois (hereinafter "Agency"), by WILLIAM J. SCOTT, Attorney General of the State of Illinois, Respondents, DAVID H. THOM, DOLORES THOM and D & N TRUCKING, INC., by their attorney P. SCOTT COURTIN, and Respondent, ROSE K. PHILLIPS, by her attorney ARTHUR BRODY, and hereby stipulate for settlement purposes only pursuant to Rule 333 of the Procedural Rules of the Pollution Control Board (hereinafter "Board"), that the following statement forms the basis of an agreement between the parties hereto and constitutes the recommended disposition of the above-entitled action. The parties further represent that this statement is complete and is not modified by any other agreement, orally or in writing, as of the date of execution.

STIPULATED FACTS

1. Respondent, D & N Trucking, Inc., (hereinafter "D & N") is an Illinois corporation doing business in Kane County, Illinois.

2. Respondent, David H. Thom, is the registered agent and President of D & N.

3. D & N has operated a refuse disposal site at U. S. Route 30 and Albright Road in Montgomery, Illinois, from September of 1974 to May 1, 1976. The site is approximately 13 acres in size and is located in Section 32 of Township 38 North, Range 8 East of the Third Principal Meridian in Kane County. Approximately 8.75 acres of the site have been leased from Respondent, Rose K. Phillips by both D & N and David H. Thom under a lease with an expiration date of September 19, 1976. (Exhibit 1) Approximately 4.25 acres of the site are owned by Respondent, Dolores Thom.

4. Residential development exists north of the site and industrial development to the northeast and east. The area to the west and north of the site is wooded or used for agricultural purposes. (Exhibit "2").

5. On January 16, 1975, the Agency received an application for a permit from D & N to allow it to operate the site as a landfill accepting heterogeneous construction and demolition wastes.

6. On March 18, 1975, the Agency issued to D & N a development permit No. 1975-25-DE, subject to certain specified

conditions (Exhibit "3"). Conditions 1 and 2 of the permit limited the site to acceptance of "clean earthen materials, portland cement, concrete waste, bricks and mortar and asphaltic concrete waste" only, and specifically excluded "putrescible, combustible, liquid or metallic wastes."

The permit conditions also required D & N to deposit all wastes at the toe of the active face of the fill slope and to install devices for limiting site access.

7. Agency inspectors visited the landfill site on December 18, 1974, January 16, 1975, February 11, 1975, August 12, 1975, August 13, 1975, August 14, 1975, August 15, 1975, November 7, 1975, November 13, 1975, January 12, 1976, January 13, 1976, March 9, 1976, March 10, 1976, March 30, 1976, April 26, 1976, May 18, 1976, May 19, 1976, June 8, 1976, and July 6, 1976. (Exhibits "4-A thru 4-V").

8. The Agency has sent letters to D & N describing observed operational deficiencies on January 21, 1975, February 7, 1975, September 2, 1975, January 28, 1976, April 2, 1976, and May 10, 1976. Responses by letter were received from D & N on January 31, 1975, and March 1, 1976 (Exhibits "5 A thru F and 6 A and B").

9. On April 14, 1975, D & N's engineer sent a letter requesting reconsideration of those conditions. The request was treated as an application for a supplemental developmental permit and denied by the Agency on April 18, 1975.

10. On April 16, 1976, the Agency filed a Complaint with the Pollution Control Board charging D & N with violation of the Environmental Protection Act. Count I of the Complaint charged D & N with operating a refuse disposal site without an operating permit issued by the Agency, in violation of Rule 202(b) (1) of the Solid Waste Rules and Section 21(e) of the Act. Count II charged D & N with operating its landfill without complying with the conditions of the Developmental Permit, No. 1975-25-DE; in violation of the permit conditions; of Rule 302 of the Solid Waste Rules and Section 21(b) of the Act. Count III charged D & N with operating its refuse disposal site in violation of Rules 303(a) 303(b), 305(a), 305(b), 305(c), 314(c) and 314(h), all in violation of Section 12(b) of the Act.

11. Settlement discussions were immediately initiated by D & N, and D & N ceased operating the site on or about May 1, 1976. Since that date, the site has been closed.

12. The gross income derived from D & N's refuse disposal business in fiscal year 1974, being the period April 1, 1974 to March 31, 1975, was \$146,995. D & N had no taxable income for that year. Gross income for fiscal year 1975, being the period April 1, 1975 to March 31, 1976, was \$180,707. D & N had taxable income for that year of \$23,217.

13. The cost of performing the work described in paragraph 17B(1) through (5) of the Proposal for Settlement is estimated to be between \$20,000 and \$30,000. This cost

reflects the fact that D & N shall itself perform the work of hauling in cover material, spreading and compacting the cover material and grading the site.

14. For purposes of this settlement, only D & N admits operating its landfill between September of 1974 and May 1, 1976, without an operating permit issued by the Agency.

15. It has been at all times economically and technically feasible for D & N to follow the conditions of its developmental permit No. 1975-25-DE, in operating its landfill site.

16. It has been at all times economically and technically feasible for D & N to operate its landfill in compliance with Rules 303(a), 303(b), 305(a), 305(b), 305(c), 314(c) and 314(h) in the Solid Waste Rules.

PROPOSAL FOR SETTLEMENT

17. As a result of discussions between the parties and their technical advisors, all parties hereto stipulate and agree that the best interests of the public and of the parties hereto will best be served by the resolution of this enforcement proceeding under the terms and conditions provided herein. In accordance with the procedure for settlement prescribed by Rule 333 of the Procedural Rules of the Pollution Control Board, the parties offer this statement of facts and stipulation and the following proposed settlement in lieu of a full hearing.

THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the parties to this enforcement action, through their

undersigned attorneys, that:

A. Respondent, D & N TRUCKING, INC., shall cease and desist from operating its landfill site at U. S. Route 30 and Albright Road in Montgomery, Illinois.

B. Respondent, D & N, shall perform the following:

(1) The area of the site on which D & N deposited refuse materials since September of 1974, consisting of the area extending 380 feet north to south and 300 feet west to east, as outlined in red on the map attached hereto as Exhibit 7 and incorporated by reference herein will be provided with a minimum of two feet (and more in those areas of the above-stated active site with a lower elevation) of finely-grained earthen material having a permeability factor of at least 1×10^{-7} cm/sec. (Earthen material having a permeability factor of $.6 \times 10^{-7}$ cm/sec. will satisfy the 1×10^{-7} cm/sec. requirement.) Finely grained earthen material having a permeability factor of 7.6×10^{-7} cm/sec. may be used as final cover provided that three feet of material is applied.

(2) At least 18 inches of final cover as described in paragraph (1) shall be applied to the site by November 30, 1976. The remaining cover shall be applied no later than June 30, 1977.

(3) Grade the entire site to eliminate inadequate drainage and alleviate any ponding on the site.

(4) Monitoring wells #1 and #2, located in the center and the north-east portions of the site, respectively, shall be maintained in operating condition. Well #1 shall be included in the monitoring program outline in paragraph (6)

(5) Four new monitoring wells shall be installed at the locations indicated on the map as N.W. No. 1 through No. 4 attached hereto as Exhibit "7" and made a part hereof by reference. A representative of the Agency shall be present during drilling, water level measurement and casing. A professional engineer's certification of the casing head elevations and water level measurements shall be provided to the Agency.

(6) A monitoring program shall be instituted as follows: The four new monitoring wells shall be sampled immediately upon completion for the following parameters: pH, aluminum, copper, nickel, managanese, and total dissolved solids. The analysis reports shall be forwarded to the Agency by the laboratory.

Thereafter, the four new wells and well #1 shall be sampled quarterly and analyzed for the above-stated parameters for a period of three years commencing from the date of the approval of this settlement by the Board. Analysis reports shall be forwarded to the Agency by the laboratory.

(7) Respondent, D & N Trucking, shall install fencing or gates across the entrance to the site sufficient to prevent access to the site.

(8) Respondent, D & N Trucking, Inc., shall execute within 30 days of approval of this Settlement Proposal by the Pollution Control Board a performance bond in the amount of \$45,000 to guarantee the performance of the measures set forth in paragraphs (1) through (5) above, said bond to be

applied by the Agency to carry out the covering of the site and installation of the monitoring wells. If D & N completes the work in paragraphs (1) through (5) above prior to thirty days from the date of Board approval of this settlement, no bond shall be required. Respondent D & N Trucking, Inc. shall execute within thirty days of approval of this settlement proposal by the Pollution Control Board a performance bond in the amount of \$5,000 to guarantee the performance of the sampling program described in paragraph (6) above. 1/3 of the \$5,000 sum shall be released by the Agency after each year the sampling program is completed.

(9) Respondent, D & N TRUCKING, INC., shall pay a penalty of \$3,000 as the full and only penalty for the violation admitted in paragraph 14 above and any violations found by the Board based on the stipulated facts.

C. Respondents, Rose K. Phillips and Dolores Thom, shall permit access to the refuse disposal site for the purpose of fully completing all work described in Paragraph B (1) through (7), and shall not hinder, impede or interfere with D & N, its employees or agents, in the performance of such work.

D. All statements contained herein, including but not limited to all statements of facts, shall not be used in further litigation by anyone.

ENVIRONMENTAL PROTECTION AGENCY

BY Richard B. [Signature]

D & N TRUCKING, INC.,
DAVID H. THOM and
DOLORES THOM

BY: P. Scott Cant

ROSE K. PHILLIPS

BY: William F. ...